IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 4347 OF 2007

Shivaji Laghmanna Kamble .... Petitioner

versus

Avadoot @ Bapu Maruti Shinde ..... Respondent.

Shri P.D.Dalvi for the petitioner.
Shri P.D.Pise for Respondent no.1.

CORAM; A.P. DESHPANDE, J.
DATED; 05TH SEPTEMBER, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for hearing by consent of parties.

2. The movable property of the present petitioner came to be attached in execution of an award passed in Motor Accident Claim Petition filed by the respondent against the son of the present petitioner. The respondent had sought an award for compensation against the son of the present petitioner on account of injuries sustained by the respondent in the accident. I am informed that the petitioner's son did not contest the proceedings and an award was passed by the Motor Accident Claims Tribunal in the sum of Rs. 81,000/- with interest. The respondent filed Darkast

proceeding against the judgment debtor viz. the son of the petitioner and in execution of the said Darkast, the articles viz. movables were attached and held in possession by the bailiff and handed over to the respondent. The movables were attached on 22-12-2006 and immediately within a weeks time the petitioner filed his objection to the attachment on 27-12-2006. The objection was filed under Order 21 Rule 58 of CPC. In the application moved by the petitioner, the petitioner claimed that the attached articles are owned by him and the petitioner's son has no concern with the movables that are attached. The petitioner did not make any prayer in the nature of interim relief for return of the attached goods. The petitioner has made a substantive prayer for return of the attached movables which is to be considered by the court by way of a final relief. The trial court passed the impugned order dated 8-3-2007 directing the present petitioner to deposit the amount of Rs. 60,000/- by the next date,as a condition precedent for adjudication of his objection. Aggrieved by the said order, the present writ petition has been filed.

3. The learned counsel for the petitioner submits that the trial court could not have directed the petitioner to deposit Rs. 60,000/- as a condition precedent for adjudication of his objection to the

attachment. Inviting my attention to Order 21 Rule 58 of CPC it is submitted that it is obligatory on the part of the court to decide the objection except in cases covered by the proviso to sub rule (1). The learned counsel submits that in the first place his movables are attached and taken in possession and in the second place, the petitioner has been directed to deposit a sum of Rs. 60,000/- as a condition precedent for adjudicating his objection. The submission is that the order passed by the executing court is without jurisdiction, besides the same being illegal and travelling beyond the scope of Order 21 Rule 58. What is to be seen is that a condition imposed by the trial court by the impugned order was possible to be so imposed in case the petitioner had made a prayer for return of the attached goods pending consideration of the application and if the same is to be granted by the executing court. When the petitioner had not made any application claiming possession of the attached property by way of interim relief pending consideration of the application under Order 21 Rule 58, the court could not have directed deposit of Rs. 60,000/-. The case of the petitioner is that the petitioner and his son are staying separately since long and thus in execution of a decree against the son of the petitioner, his movables could not have been attached. The trial court is

ceased of the objection and need to proceed to decide the objection in accordance with the law. The condition imposed for adjudicating the objection raised by the petitioner to the attachment being patent illegal, I am constrained to quash and set it aside.

4. In the result, the impugned order dated 8-3-2007 is quashed and set aside. The District Judge/Member MACT, Sangli shall proceed to decide the objection of the petitioner to the attachment of the movables as expeditiously as possible. Rule made absolute in the above terms.

5. The learned counsel for the petitioner submits that till decision of the objection, the attached goods be not sold. The learned counsel for the respondent has submitted that he has already given an undertaking that he will not sell the attached property till the decision of the objection. In this view of the matter, no order is necessary to be passed in that regard.

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